IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 6924 of 1985

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RANA UDAYSINGH JAMSINGH
VERSUS
STATE OF GUJARAT

Appearance:
MR AD MITHANI for the Petitioner
MR MUKESH A PATEL for Respondents NO.1, 2 and 3
MR UTPAL PANCHAL for Legal heirs of Respondents No. 4 and 5

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 30/12/1999

C.A.V. JUDGMENT

1. The petitioner by this petition under Article 227 of the Constitution challenges the legality, propriety and correctness of the order of the Dy. Collector, Wadhwan Sub Division, Wadhwan, District Surendranagar dated 26th April, 1982 and the order annexure `C' dated 12-7-1984 of the Gujarat Revenue Tribunal in Revision Application No. TEN.B.A. 1090/92. Further prayer has been made for quashing and setting aside of these two orders. AS usual, prayer has also been made for grant of interim relief.

2. This petition has come up for preliminary hearing in the court on 19th December, 1985, on which date, the same was admitted and interim relief in terms of para-27 (C) has been granted. Para-27 (C) reads as under:

> This Hon'ble Court will be pleased to restrain the respondents, their servants and agents from disturbing the possession of the petitioner of the land admeasuring 5 acres and 12 gunthas of Survey No. 913 of village Dedadara till and pending the hearing and final disposal of this petition;

3. The facts of the case, as per the averments made in the special civil application are as under:

The petitioner is a Girasdar within the definition of section 2 (15) of the Saurashtra Land Reforms Act, 1951 (hereinafter referred to as the Act, 1951). This Act came into force w.e.f. 1-9-1951. The petitioner owns and possesses the agricultural land bearing survey No. 913 of village Dedadara admeasuring 5 Acres and 12 gunthas. This land, as per the case of the petitioner, was reserved as Ghar Khed as defined in section 2 (14) of the Act, 1951. In column of cultivator in Form NO. 7, the name of respondent NO. 5 is shown. As this land was reserved as Ghar Khed, the petitioner applied for occupancy certificate before the Mamlatdar in Form No. 9. The respondent No.5 has also filed an application in Form No. 11 for obtaining the occupancy right of the Ghar Khed but he did not ask for the occupancy certificate in respect of the land bearing survey No. 913 because he was not the tenant thereof within the meaning of the provisions of the ACt. He stated that he did not claim any tenancy right and that the occupancy certificate be issued to the petitioner in respect of the land in question. The Mamlatdar, Wadhwan under its order dated 22-5-1981 granted occupancy certificate in the name of the petitioner in respect of

the land in dispute after conducting a detailed inquiry and after appreciation of the evidence produced on the record. This order has been challenged by the respondent No.4 before the Dy. Collector, Wadhwan, Sub-Division, Wadhwan, Dist. Surendranagar by filing an appeal being Land Reforms Appeal NO. 2 of 1981. He has come up with the case in the appeal that the land in dispute is an ancestral property and is of the ownership of the respondent NO.4. It is stated that the petitioner is a Girasdar who has no right, title and interest in the land in question. It is not the Ghar Khed land of the Girasdar. It is further stated that the land in dispute is not shown as inami land of Girasdar in the Inami Register and therefore the Girasdar has no right to obtain the occupancy certificate in respect of the land in dispute. The occupancy certificate in respect of the land in question could not be granted twice. It is further contended that the petitioner in collusion with the respondent NO.5 had applied for the occupancy certificate in respect of the land in question. Before the appellate authority, the petitioner has come up with the defence which are as under:

That it is a Ghar Khed land (ii) it is given to respondent No.5 for cultivation and the respondent NO.5 was the tenant of the petitioner, (iii) in the Measurement Register, the land in question was measured in the name of Jamsingh Madhavsingh, (iv) the respondent NO.5 decided to surrender the land to Girasdar and Form No.9 was filled in and filed, (v) the respondents NO.4 and 5 are Barkhalidars and in the application filed by them for obtaining the tenancy rights of their land, the land in dispute is not shown for occupancy rights.

4. The Deputy Collector, Wadhwan after hearing both the sides under its judgment dated 24-5-1982 allowed the appeal and quashed and set aside the order of the Mamlatdar. The petitioner being aggrieved of this judgment of Deputy Collector, Wadhwan, filed the revision application before the Gujarat Revenue Tribunal at Ahmedabad which came to be rejected under the impugned order. Hence, this special civil application before this court.

5. Shri A.D. Mithani, learned counsel for the petitioner contended that both the appellate authority as well as the revisional authority has committed serious illegality in deciding the matter against the petitioner. Referring to the provisions of section 2 (8) of the Saurashtra Gharkhed Tenancy Settlement and

Agricultural Land Ordinance, 1949, Shri Mithani submitted that this land was a Gharkhed land which continued to be a Gharkhed land as it was cultivated by tenant on 1-1-1948. The respondent NO.5 was the person who name was shown in village form No. 7 and 12 and he admitted him to be tenant and did not claim the occupancy certificate in respect of this land, the Mamlatdar has rightly granted the occupancy certificate in his favour. When he has reported before the Mamlatdar that he is willing to hand over the possession to the petitioner, the Mamlatdar has not committed any mistake in holding the land to be a Gharkhed land of the petitioner. The respondent No.4 was having no right, title and interest in the land and in fact he has no locus-standi to file the appeal also. The tenant was allowed to continue to cultivate the land on 1-1-1948. Thereafter he cultivated the land and as a result thereof under the Ordinance aforesaid it has to be taken to be a Gharkhed land and rightly the same has been taken so and occupancy certificate has been granted in favour of the petitioner.

6. The counsel for the respondents NO.4 and 5, on the other hand, opposed this special civil application. In his submission, Shri Panchal submits that both the authorities have concurrently held and rightly so that it is not a Gharkhed land. When the land is not a Gharkhed land , no question does arise for grant of occupancy certificate in favour of the petitioner. The petitioner has to stand on his own case and not on the weakness of the case of the respondents. He has to establish his own right which he failed to do so. Merely because the respondent No.5 has surrendered the land in favour of the petitioner, it will not adversely affect the right of respondent NO.4 who has equal share in the land. He has locus-standi in the matter and has rightly riled the appeal.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

Section 2 (8) of the Saurashtra Gharkhed Tenancy Settlement and Agricultural Land Ordinance, 1949 read as under:

"Gharkhed" means land reserved by a land holder for cultivating personally.

Provided that the land shall continue to be Gharkhed land even if a landholder allows the same to be cultivated by the tenant cultivating

the land on the 1st January, 1948.

8. The respondent NO.5 was in possession of the land in dispute on 1-1-1948 and he continued on the land thereafter. He was cultivating the land also. Learned counsel for the petitioner has failed to show any material on the record of this special civil application as well as on the record of the Mamlatdar or the Deputy Collector or the Revenue Tribunal that the land in dispute was reserved by the applicant for cultivating personally. Section 19 of the Act, 1951, makes a provision for allotment of land for personal cultivation on the application to the Girasdar. Any Girasdar within four months at any time from the date of commencement of the Saurashtra Land Reforms (Second Amendment) Ordinance, 1952, can apply to the Mamlatdar for allotment to him of land for personal cultivation. In the application following particulars are to be given out and one of them is the right under which the Girasdar claims the land. Second is the area and location of the Gharkhed in his estate. Before the Tribunal, on the question put by the Tribunal, the counsel for the petitioner admitted as a fact that the suit land has not been shown in Form No.1 filled in by the petitioner for getting the land for personal cultivation under the Act, 1951 as a Gharkhed land. Form No.1 prescribed under Rule 12 of the Saurashtra Land Reforms Rules, 1951 is a form of application by the Girasdar for allotment of the land for personal cultivation. Part-B of the form is relevant. Under this part, the Girasdar has to give particulars of Gharkhed land and Khalsa land in his possession. He has to give out the survey numbers, area etc. of such lands. The allotment of the land for personal cultivation has to be made after taking into consideration the area of the Gharkhed land in possession of the Girasdar. Reference here may have to the provisions of section 21 and 22. The land in Gharkhed of Girasdar was the land reserved by the Girasdar as Gharkhed is not declared/shown in this form. There is all possibility that the Mamlatdar may allot the Girasdar more land for personal cultivation. The petitioner has not shown this land in Form No.1 admittedly and it is difficult to accept now after 30 years that he reserved this land as Gharkhed. The petitioner, in case it would have been reserved as Gharkhed certainly would have made declaration thereof accordingly and non-inclusion of this land in form No.1 is a conclusive evidence against him that what he now claims is not correct.

9. Learned counsel for the petitioner has not

controverted this admission of the counsel for the petitioner made before the Tribunal. In the presence of this fact and particularly the petitioner's own conduct of not disclosing this land to be a reserved Gharkhed land, the claim of the petitioner could not have been accepted by the Mamlatdar and rightly both the appellate authority and the revisional authority decided the matter against him. It is not the case where there was no evidence to show that the suit land was reserved by the as Gharkhed by the petitioner but there is a conclusive evidence against him that it was not a reserved Gharkhed land. In these facts, and more so, when on this land, the respondent NO.5 was in possession as a tenant, the Mamlatdar has committed serious illegality in granting the occupancy certificate in favour of the petitioner of this land. The claim of the petitioner in this land does not stand to any merits or substance. No interference in the order of the appellate authority as well as the Tribunal calls for of this court under Article 227 of the Constitution. In such case, relief of the nature as prayed for is granted then the petitioner will get doubly benefits and that too by playing a fraud with the authorities. There is no explanation worth the name not to file this application at the earliest. The application has been filed after about 30 years of this Act. Otherwise also for occupancy certificate, time limit is prescribed and this application which has been filed after 30 years and coupled with the fact that in form NO.1, it was not declared to be reserved Gharkhed land, goes to show that the claim of the petitioner is not a bonafide one. Otherwise also, if such claim are permitted then the petitioner will get the land for his personal cultivation more than what otherwise it would have been permissible to him. In the special civil application nor before the lower authorities, it is stated by the petitioner that after allotment of this land in his favour, it will not exceed the limits of allotment as provided under the Act, 1951 to a Girasdar. In fact, from this angle, the matter was not considered by any of the lower authorities.

10. Though the claim of the petitioner is not acceptable, at the same time, whether the respondent NO.5 could have been given any relief is a next question which calls for the consideration of this Court. The respondent NO.5 was in occupation of this land. He continued to be in possession. It is true that he has delivered the possession of the land to the petitioner but the respondent NO.4 could have been given any relief in this case. He has failed to show that he was the

tenant of the land. In the revenue record, the name of the respondent NO.4 was not there. At no point of time, he has challenged the revenue entries. Merely because, he was the brother of respondent NO.5 he can not be taken to be a co-tenant. The respondent NO.4 has failed to show any interest in the land. Even before the Tribunal he has failed to produce any evidence or any other material to show any of his right title or interest in the land. The Dy. Collector, Wadhwan, has also not held that the respondent NO.4 has any interest in the land. Merely because there was some dispute between the brothers, it is difficult to accept what to rely that the respondent NO.4 has some interest in the land. The respondent No.4 has to show by producing cogent and sufficient material on the record his interest in the land. A fact has come on the record, on which there is no dispute that while claiming the occupancy certificate as a Barkhalidar, the respondent No.4 has not shown this land to be in his tenancy. In fact the respondent No.4 has no right, title or interest in the land as what he is claiming. This should have been disclosed in the application filed for taking occupancy certificate as a Barkhalidar. For other lands, this certificate was taken but not for this land. This fact goes against the respondent NO.4 and he can not be taken to be a tenant of this land. The Mamlatdar has not accepted the claim of the respondent NO.4 and has categorically given out the reasons of his failure to prove his interest in the land. It is unfortunate that the appellate authority as well as the revisional authority have not cared to go through these reasons. Without dissatisfied with those reasons by giving cogent grounds, I fail to see how far it is justified for these authorities to held the interest of respondent No.4 in the land to the extent where the possession thereof was ordered to be given to the respondent NO.4.

11. The Mamlatdar on appreciation of evidence has recorded the reasons not to accept the interest in the land of the respondent NO.4, which are as under:

The respondents No.4 and 5 obtained the possession right of their lands as Barkhalidar and certificate has been obtained accordingly. On verification of the certificate there is no mention about the land in dispute therein. If Natverlal Sukhlal's father was given this land by the father of the petitioner then it was very much necessary to mention about this land in the form filled in the capacity of Barkhalidar by them which has not been done. It is not proved that he has any interest in the land

and if they have a joint property this fact has to be mentioned in the revenue record. Similarly, at the time when they have separated the same, information has to be required to be given to the Talati concerned which has not been given. The settlement if any was there,it has to take the copy thereof. On verification of the record of the land revenue, this land from the beginning is shown in the occupation of Chimanlal Sukhlal.On verification of village forms NO. 7 and 12, occupation has been shown in the name of Chimanlal Sukhlal as per the new certificate against the old measurement and number name of Chimanlal Sukhlal is shown. The respondent No.4 has not produced any cogent and satisfactory evidence for his interest in the land as a result of which no relief could have been granted in his favour.

12. Though on the basis of these facts as the petitioner has not been able to prove his case, no interference in the orders of the appellate authority and revisional authority is called for in his favour, but at the same time, respondent No.4 has no right title and interest in this land and no relief could have been granted to him also. The order of Mamlatdar can not be allowed to stand but at the same time on the basis of the judgment of the lower authorities, the respondent No.4 can not get any benefit. The land is in the possession of the Government and it is hereby clarified that in this land neither of the parties, i.e. the petitioner, Chimanlal Sukhlal and respondent No.4 (since deceased) now his legal heirs have any right,title and interest in the land in dispute. The land in dispute shall vest in the State Government free from all encumbrances. The Special civil application and Rule stand disposed of in the aforesaid terms with no order sa to costs.

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